

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE

MARINE SPILL RESPONSE CORPORATION

And

Case 21-CA-36663

INLANDBOATMEN'S UNION OF THE PACIFIC,  
MARINE DIVISION, INTERNATIONAL  
LONGSHORE AND WAREHOUSE UNION, AFL-CIO

On Behalf of the General Counsel,  
*Lisa E. McNeill, Esq.*

On Behalf of Respondent,  
*Avrum M. Goldberg, Esq.*  
*and Dawn E. Starr, Esq., Akin Gump Strauss,*  
*Hauer & Feld, LLP, of Washington D.C.*

On Behalf of the Charging Party,  
*Carlos Cordon, International Organizer,*  
*of San Pedro, California.*

DECISION

Statement of the Case

**JOHN J. MCCARRICK, Administrative Law Judge:** This case was tried in Los Angeles, California, on November 7-9, 2005 based upon the Complaint issued on June 22, 2005 by the Regional Director for Region 21. The Complaint was amended on June 27, 2005. The Complaint, as amended, alleges that Marine Spill Response Corporation, Respondent, as the successor to Clean Coastal Waters, herein CCW, has refused to recognize and bargain with Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO, herein the Union, the exclusive collective bargaining representative of Respondent's employees, in violation of Section 8(a)(1) and (5) of the Act. Respondent filed a timely answer to the Complaint denying any wrongdoing and denying that they are a successor employer.

Findings of Fact

Upon the entire record herein, including the briefs from the General Counsel and Respondent, I make the following findings of fact.

I. Jurisdiction

Respondent, a Tennessee corporation, with facilities located at 190 South Pico Avenue, Long Beach, California and 20780 Leapwood Avenue, Carson, California, is engaged in the

business of providing clean up services for oil, substance spills and natural disasters. During calendar year 2004, Respondent in the course of its business operations performed services valued in excess of \$50,000 outside the State of California.

- 5           Based upon the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. Labor Organization

- 10           Respondent admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Alleged Unfair Labor Practices

- 15           The facts in this case are not in significant dispute. After the 1989 Exxon-Valdez oil spill in Alaska, due to Congressional Legislation mandating the establishment of Oil Spill Response Organizations (OSRO), in 1990 Respondent was created by several major oil companies to clean up oil spills on the coasts of the United States. Respondent is non profit funded by the Marine Preservation Association (MPA). Later in the mid-1990's MPA increased its funding to  
20 Respondent so that it could undertake additional clean up functions such as hazardous spills, inland spills and natural disasters nationally and internationally. In addition to its headquarters in Herndon, Virginia, Respondent maintains regional centers in New Jersey, Louisiana, California and the state of Washington. Respondent has 75 manned and unmanned facilities in the United States and employs over 250 employees. Respondent has in excess of 4000  
25 customers that include oil companies, insurers and cargo vessels.

- Steve Benz (Benz) is Respondent's President and is located at Respondent's Herndon, Virginia corporate and administrative headquarters. Under Benz are four Regional Vice Presidents located at the Regional administrative offices. Steve Ricks (Ricks) is Vice President  
30 of the California Region with administrative offices in Concord, California. Under Ricks are Area Response Managers for Northern and Southern California. Ray Nottingham (Nottingham) is Area Response Manager for Southern California and is located in Long Beach, California. Reporting to Nottingham are four response teams. These teams include the Carson, California team of five employees supervised by Jeff Jappe (Jappe), two Long Beach, California teams,  
35 one team of six employees supervised by John Degner (Degner) and second team of five employees supervised by Rick Tamayo (Tamayo) and a San Diego, California team of three employees supervised by Kyle Hanson (Hanson).

- Since at least 1990, Clean Coastal Waters, Inc., (CCW) was an Oil Spill Response  
40 Organization (OSRO), licensed by both the State of California and the Federal Government to conduct offshore oil spill clean ups in the Southern California area from Pt. Dume near Oxnard, California to the Mexican border south of San Diego, California. CCW operated from its facility at 190 South Pico Avenue, Long Beach, California. Nottingham was President of CCW, Dave Redman was Operations Manager, and Tamayo and Degner were supervisors. CCW employed  
45 approximately 13 employees who were divided into two teams, supervised by Tamayo and Degner. On March 26, 1998 the Union was certified in case 21-RC-19901 as the bargaining representative of CCW's boat operators and crew members employed at its 190 South Pico Avenue Long Beach, California facility.<sup>1</sup> On April 1, 2003 CCW and the Union signed a

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<sup>1</sup> Joint exhibit 1.

collective bargaining agreement effective April 1, 2003 to March 31, 2006, covering CCW's employees in the above unit.<sup>2</sup>

As a result of a merger on about July 1, 2004, the assets of CCW were transferred to Respondent, including all of CCW's vessels and oil recovery equipment. Respondent hired 12 of CCW's bargaining unit employees as well as most of CCW's managers and supervisors.

#### A. CCW Operation

Since the 1970's CCW performed oil spill clean up from Pt Dume south to the Mexican Border. CCW performed oil clean up and recovery services for about 11 members and fewer than 30 subscribers. In performing its clean up functions, CCW employed 13 bargaining unit employees who operated boats, barges, and various items of oil recovery equipment. CCW categorized the bargaining unit employees as crew members, boat operator I or boat operator II. At CCW bargaining unit employees received their day to day work assignments from supervisors Degner and Tamayo. On a daily basis CCW employees performed checks on equipment to assure they were in good working order. As needed, employees would perform preventative and corrective maintenance on recovery equipment and vessels. Employees operated various boat trailers, vehicles, power packs, skimmers, oil recovery booms, gas monitoring systems, breathing apparatus, absorbants and dispersants. CCW employees worked on vessels of varying sizes including 18 foot sea sleds, 30 foot recovery I vessels, a 50 foot shallow water barge and 100 foot recovery vessels. Bargaining unit employees operated the oil recovery equipment aboard the 140 foot vessel *Cleanwaters* while an independent contractor operated the vessel. CCW bargaining unit employees worked generally from 7:30am to 4:00pm Monday through Friday and were subject to a voluntary on call system. CCW employees participated in mandatory training exercises two to three times a month. From time to time CCW employees went out of their geographic area of responsibility to assist other OSROs in California. Through a mutual aid agreement, the OSROs responsible for oil recovery in the San Francisco Bay area, Clean Bay, in the Santa Barbara Channel, Clean Seas and in Southern California, CCW, assisted each other when the oil recovery operation exceeded their capacity. Since 1992 CCW employees trained with Clean Bay employees twice for five days each and trained with Clean Seas employees on another occasion. CCW lent a boat and crew to Clean Seas, went to an oil platform in the Santa Barbara Channel in an oil recovery operation and deployed six employees to an Avila Beach, California oil spill on the California central coast for a week in aid of Clean Seas. Bargaining unit employee wage rates are set forth in Joint exhibit 2 at page 8. Effective April 1, 2004, Boat Operator I earned \$20.98 to \$22.45, Boat Operator II earned \$16.62 to \$18.41 and Crew Member earned \$13.13 to \$14.32. CCW provided its employees with medical benefits and a 401(k) plan.

#### B. Respondent's Operation

Since 1990 Respondent has provided oil recovery and clean up throughout the coastal United States and since the mid 1990's oil and hazardous substance clean up, shoreline clean up, inland clean up and offloading ships (lightering) both in the United States and internationally. Respondent services over 4000 clients, including those CCW formerly serviced.

At the time of the CCW-Marine Spill Recovery Corporation merger, Respondent operated a nationwide set of facilities managed from both a central corporate office in Herndon, Virginia and four Regional offices, including its California Regional Office located in Concord, California near San Francisco. Both Respondent's labor relations and personnel policies are

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<sup>2</sup> Joint exhibit 2.

established at the corporate headquarters and are administered by Regional Vice Presidents. Respondent creates job descriptions at the corporate level. Likewise all terminations, transfers, hires and benefits programs are decided at the corporate headquarters. Respondent employs 280 employees in 34 locations. All of Respondent's employees engaged in direct recovery operations are called Responders, Lead Responders and Master Responders. Rates of pay, within a range determined by the corporate office, are set by the Regional Vice Presidents.

Respondent's California Regional Vice President Ricks is responsible for seven locations with 46 employees throughout the State of California. The Regional Office provides all administrative functions for the sites in California, and makes recommendations to hire, fire and discipline employees. In hiring, the Regional Human Relations Department interviews prospective employees with the first line supervisor and the Area Response Manager and a recommendation is made to the corporate office which has the final decision. Employee personnel files are maintained at the Regional Office.

At Respondent's local facilities, the first line supervisors approve both vacation and overtime for employees and make day to day work assignments. In addition the local supervisors prepare performance appraisals.

Because of its mission and size, Respondent has the ability to send employees to recovery operations throughout the United States. This practice is known as "cascading." Since Respondent merged with CCW, there have been two emergencies that required nationwide cascading. Both of these incidents involved hurricanes in the Gulf Coast area. In September 2004 Respondent cascaded employees from throughout the United States to the Gulf Coast in the aftermath of Hurricane Ivan and in September 2005 Respondent cascaded its employees to the Gulf area after Hurricanes Rita and Katrina. Employees were assigned to various administrative and clean up duties for one to three weeks at a time. Not all employees were required to cascade in these two emergencies. In 2004 four of 17 employees from the Carson-Long Beach facilities cascaded to Hurricane Ivan clean up and in 2005 eight of 16 Carson-Long Beach employees went to the Gulf in response to Hurricanes Rita and Katrina.<sup>3</sup> In addition in August 2004, when Respondent opened a new facility in San Diego, California, eight employees from Carson-Long Beach went to San Diego for one week at a time to help open the new facility.

Respondent conducts drills at its local facilities mandated both by the corporate office and state and Federal regulatory agencies. Respondent also provides for financial audits at its nationwide facilities on a regular basis.

When Respondent merged with CCW in July 2004, it already operated a facility at Carson, California, employing four Responders.<sup>4</sup> Respondent effectively merged its Carson facility with the CCW Long Beach facility where CCW had employed 13 bargaining unit employees.<sup>5</sup> The Carson and Long Beach facilities are about nine miles apart. Respondent hired 12 of the CCW Long Beach bargaining unit employees at the time of the merger.<sup>6</sup> After the merger there were 18 Responders in the Carson-Long Beach facilities.<sup>7</sup> Following the merger, two of Respondent's Carson employees were transferred to Long Beach and four CCW employees were transferred to Carson. In addition there is regular interchange of employees

<sup>3</sup> Respondent's exhibits 10 and 12.

<sup>4</sup> Respondent's exhibit 4.

<sup>5</sup> Joint exhibit 3.

<sup>6</sup> Compare Respondent's exhibit 5 and Joint exhibit 3.

<sup>7</sup> Respondent's exhibit 5.

between the Carson and Long Beach facilities for work assignments, meetings, drills and training. Tamayo and Degner remained the supervisors of the two Long Beach Responder teams and Jappe supervises the Carson team. Nottingham was made Respondent's Area Response Manager, supervising the two Long Beach teams, the Carson team and the San Diego team. Respondent plans to merge the Carson and Long Beach locations into one facility in Long Beach as of December 2005.

The Responder's job duties at the Carson-Long Beach facilities remained essentially unchanged from the job duties with CCW. With both employers Responders did check offs, performed routine and preventative maintenance and engaged in training and various drills. The equipment was essentially the same at both employers although Respondent introduced some new oil skimmers, a different shallow water barge and a larger oil recovery boat, the 200 foot long *California Responder*. Like CCW's employees aboard the *Cleanwaters*, Respondent's employees operate the oil recovery equipment aboard the *California Responder* but an independent company operates the vessel itself. Respondent's employees at Long Beach continue to use the same oil recovery equipment they had used with CCW in addition to the new oil recovery equipment introduced by Respondent. Responders are also required to perform inland oil recovery and shoreline clean up in addition to oil spill clean up at sea. Respondent introduced a computer system that requires Responders to input their maintenance check offs of equipment. Computer duties occupy from 30 minutes to two hours a day. Respondent has given Responders authority to charge up to \$1000 for the purchase of parts and supplies. Respondent's Responders work an alternative work schedule generally from 7:00 a.m. to 4:30 p.m. In a two week pay period, Responders work nine hours for four days, one day for eight hours then four days for nine hours and the fifth day off. Respondent has a mandatory on call system for Responders. Responders must report for duty within two hours, 24 hours a day, seven days a week. The job titles of employees changed after the merger. CCW Crew Member became Responders, Boat Operators II became Lead Responders and Boat Operators I became Master Responders. Long Beach Lead Responder Garrick Gilham earned \$18.41 an hour as a Boat Operator II with CCW and \$20.05 an hour with Respondent. Long Beach Lead Responder Tim Parker earned \$18.41 an hour as a Boat Operator II with CCW and \$19.00 an hour with Respondent. Respondent provides its employees with both medical benefits and a 401(k) plan that differ in minor ways from the CCW medical and 401(k) plans.

### C. The Demand for Recognition

In its letter of July 2, 2004, the Union, as the collective bargaining representative of the employees in the bargaining unit consisting of boat operators and crew members of CCW,<sup>8</sup> made a demand for recognition and bargaining upon Respondent. In response, by letter dated July 15, 2004, Respondent stated that it was not a successor to CCW and desired that the matter be submitted to the Board for adjudication.<sup>9</sup> Again on September 24, 2004 the Union made a demand for recognition and bargaining upon Respondent. Respondent has refused to recognize or bargain with the Union as representative of the employees in the CCW bargaining unit.

### D. The Law

The Supreme Court in *NLRB v. Burns International Security Services*, 406 U.S. 272, 281 (1972), established that a successor is bound to bargain with the union representative of its predecessor's employees if, "the bargaining unit remains unchanged and a majority of

<sup>8</sup> Joint exhibit 5.

<sup>9</sup> Joint exhibit 6.

employees hired by the new employer were represented by a recently certified bargaining agent.” In *Howard Johnson Co. v. Hotel and Restaurant Employees, Detroit Local Joint Executive Board*, 417 U.S. 249, 263 (1974), the Court stated that one test of successorship was the “substantial continuity of identity of the business enterprise.” In *Valley Nitrogen Producers*, 207 NLRB, 208 (1973), the Board held that the criteria for determining substantial continuity in the employing industry includes whether an employer, “uses substantially the same facilities and work force to produce the same basic products for essentially the same customers in the same geographic area.” Later in *Fall River Dyeing and Finishing Corp. v. NLRB*, 482 U.S. 27, 41 (1987), the Supreme Court clarified *Burns* and said if a, “new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of Section 8(a)(5) is activated.”

In applying these principles, an employer will be found a successor if there is continuity in the workforce, i.e., has it hired a majority of the predecessor’s employees, if there is continuity of the appropriate bargaining unit, i.e., does the bargaining unit remain appropriate and if there is substantial continuity of the business enterprise. It is the employees’ perspective and their expectations of continued representation that is paramount when assessing these factors in determining successorship. *Pennsylvania Transformer Technology, Inc. v. NLRB*, 254 F.3d 217 (D.C. Cir. 2001), enforcing 331 NLRB 1147 (2000).

## E. The Analysis

### 1. Continuity of the Workforce

There is no dispute that Respondent hired a majority of its predecessor, CCW’s, employees from the Long Beach bargaining unit that were represented by the Union. Thus, there is continuity of the workforce vis-à-vis the Long Beach bargaining unit. The dispute is whether there is continuity of the appropriate bargaining unit and of the business enterprise.

### 2. Continuity of the Appropriate Bargaining Unit

Counsel for the General Counsel concedes that there has been a change in the appropriate bargaining unit in that it has expanded into the Carson, California facility. Respondent, on the other hand, contends that due to the functional integration and interchangeability of employees only a nation-wide unit of Responders is appropriate. In the alternative Respondent argues that the smallest appropriate unit is the unit consisting of all Responders employed by Respondent in the California Region.

A bargaining unit need not be the most appropriate unit under all of the circumstances, it must be only an appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991). In *Budget Rent a Car Systems, Inc.*, 337 NLRB 379 (2002), the Board reaffirmed that a,

[S]ingle-facility unit is presumptively appropriate, unless the single facility has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity. *R&D Trucking*, 327 NLRB 531 (1999). To determine whether the single-facility presumption has been rebutted, the Board looks at such factors as the similarity of employee skills, functions and training, the distance between the facilities, the functional coordination in operations of the facilities, common supervision, centralized control of operations and labor, contact between employees at different facilities, employee interchange (particularly temporary transfers) between facilities, common wages, benefits, and terms and conditions of employment, and

bargaining history, if any. See *Waste Management Northwest*, 331 NLRB 309 (2000); *New Britain Transportation Co.*, 330 NLRB 397 (1999).

An employer must overcome this presumption and demonstrate that a single facility unit is inappropriate. *Dattco, Inc.*, 338 NLRB 49 (2002). A review of recent Board decisions reviewing the issue of the appropriateness of single facility units and multi facility units in a larger corporate organizational structure is helpful in analyzing this case.

In *North Hills Office Services*, 342 NLRB No. 25 (2004), *Ready Mix USA, Inc.*, 340 NLRB 946 (2003), *Van Lear Equipment, Inc.*, 336 NLRB 1059 (2001), *New Britain Transportation Co.*, 330 NLRB 397 (1999), *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999) and *First Security Services Corp.*, 329 NLRB 235 (1999) the Board found single facility units or units smaller than the employer's larger organizational structure appropriate.

In *North Hills*,<sup>10</sup> the Board found a single unit of 27 service employees appropriate despite the employer's larger regional administrative unit composed of 366 employees at 59 facilities in the New York/New Jersey area. Despite the similarity of job functions among employees, and the new employer's centralized labor relations and personnel policies, the Board noted that there was local supervision and some degree of labor relations autonomy at the Meadows facility, limited transfer and interchange among the various employer facilities in the greater New York/New Jersey area and the Meadows. The Board distinguished *Trane, an Operating Unit of American Standard Companies*, 339 NLRB 1 (2003), *Waste Management, supra*, and *P.S. Elliot Services, Inc.*, 300 NLRB 1161 (1990) where it found the single plant unit presumption had been rebutted since in those cases there was no local supervision or local autonomy of labor relations.

In *Ready Mix, supra*, the Board found the predecessor's 39 employee, three-plant facility still appropriate despite its merger into the successor's 800-employee operation. In *Ready Mix* there was a history of bargaining as well as local autonomy and supervision at the three unit facility.

In *Van Lear, supra*, the merger of the predecessor's 32 employee bargaining unit into the successor's 218 employee administrative organization that had a high degree of centralized labor relations and personnel policies did not defeat the single facility presumption where the predecessor unit retained local labor relations autonomy and local supervision and where there was no interchange or transfer of employees from the single facility to the successor's other locations.

In *New Britain, supra*, the predecessor's single facility of bus drivers remained appropriate where there was evidence of local autonomy in labor relations, local supervision and lack of interchange or transfer of employees from the single location to the successor's other facilities, despite the successor's central control of labor relations and personnel functions.

In *Rental Uniform, supra*, the Board found a single processing plant appropriate despite the fact that it had two satellite facilities 22 and 38 miles away where each satellite facility had its own managers and supervisors who retained some degree of labor relations autonomy and where there was no interchange among the three facilities.

In *First Security, supra*, the Board found the petitioned for unit of 34 guards at one of the successor's facilities in an administrative region consisting of 230 guards at over 17 client

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<sup>10</sup> *North Hills*, footnote 3

facilities, appropriate despite the successor employer's highly centralized labor relations and personnel functions that included common pay, hiring, firing and discipline. The single facility retained day to day supervision, including local work assignments, local approval of overtime, initial preparation of performance appraisals and the absence of employee interchange or transfer.

In *Clarian Health Partners, Inc.*, 344 NLRB No. 28 (2005), *Laboratory Corp. of America Holdings*, 341 NLRB No. 140 (2004), *Trane, supra*, *Dattco, supra*, *Budget Rent a Car, supra*, and *Waste Management, supra* the Board found that the appropriateness of the single-plant unit had been rebutted.

In *Clarian, supra*, a merged health care facility, the Board found the predecessor's unit of maintenance employees at a single location no longer appropriate where there was common supervision, interaction and exchange among maintenance employees in several similar facilities only five minutes apart.

In *Laboratory Corp.*, *supra*, the Board reversed the Regional Director who had found a seven facility unit appropriate out of the employer's 29 facility administrative region, where all 29 facilities were in similar geographic proximity, where there was common supervision of all 29 facilities, where the supervision of the seven facility unit was in a state of flux and not consistent with other employer administrative groups and where there was frequent employee interchange.

In *Trane, supra*, a 16 employee single facility unit among the employer's three facility St. Louis District was found not appropriate where there was centralized labor relations, supervision and personnel policies at all three facilities and no supervision or management one of the facilities. There was common interchange and frequent contact among employees at all three facilities.

In *Dattco*, 338 NLRB 49 (2002), the employer contended that its predecessor's Hartford, Connecticut bus driver's terminal was not an appropriate unit as it had been integrated into its statewide administrative organization. The Board found that Dattco had highly centralized labor relations with no local autonomy of the managers or dispatchers at each of its nine terminals. Local terminal managers or dispatchers could not grant time off, hire, fire or discipline employees. All work assignments were made at headquarters not by the terminal dispatcher or manager. There was significant interchange among the Hartford drivers to and from various terminals where they were supervised by the local terminal dispatcher or manager.

In *Budget Rent a Car, supra*, the Board found the petitioned for single facility unit inappropriate where there were seven similar rental facilities in the Detroit area, five of which, including the petitioned for facility, were commonly managed, where there was no local autonomy of labor relations, where there was daily contact among employees of the various Detroit facilities, where there was regular interchange and transfer of employees among the five facilities, including the petitioned for unit, and where there was no supervision at the petitioned for location.

In *Waste Management, supra*, the petitioned for unit of 18 employees at the Woodinville, Washington facility performed identical tasks as the 12 employees at the Fife, Washington facility 42 miles distant. In finding the single unit inappropriate, the Board noted that there was no supervisor at the Fife facility, that all supervisors and managers were at Woodinville, that all work assignments were made from Woodinville and that there was frequent interaction and coordination among the Fife and Woodinville employees.



Common to those cases where a single facility or a multi facility unit smaller than the unit requested by the employer was found appropriate, are local autonomy of labor relations in the smaller unit, including the ability of local supervisors to schedule work, grant time off and prepare initial appraisals, and lack of regular interchange, interaction or transfer between the smaller unit and the employer's larger administrative unit. The common thread in each of those cases where the single facility presumption was rebutted, in addition to centralized control of labor relations and personnel functions by the new employer among several facilities, was no evidence of local autonomy or day to day local supervision at the predecessor facilities, evidence of common day to day supervision at the different plants, evidence of regular interaction among employees and employee transfers among the facilities including the petitioned for units.

In this case, I find that the presumption that a single facility unit is appropriate has been overcome.

Since 1998 there has been a history of bargaining between the Union and CCW regarding CCW's oil clean up employees at the Long Beach facility. With the merger Respondent continued to operate CCW's Long Beach facility but effectively merged the day to day operation of the Long Beach facility with its preexisting Carson facility. After the merger, Respondent transferred Carson employees to Long Beach and Long Beach employees to Carson. There is ongoing exchange of employees between the Carson and Long Beach facilities. Both Carson and Long Beach employees attend daily meetings where work is assigned, participate together in weekly drills, training and safety meetings, and perform essentially the same work under the common supervision of Nottingham. This functional and operational integration is so complete that as of December 2005 Respondent planned to merge the Carson and Long Beach facilities at a new facility near the Long Beach airport. I conclude that the single Long Beach facility has been so effectively merged and integrated with the Carson facility that it has lost its separate identity. *Dattco, supra*.

In addition to the Carson and Long Beach facilities, in August 2004 Respondent opened a new manned Responder facility in San Diego, California, with a supervisor and three Responders under the supervision of Nottingham. San Diego is located about 100 miles from Long Beach. Unlike the Carson and Long Beach employees, there is no daily or weekly interchange of employees with San Diego. While Carson-Long Beach employees were detailed to San Diego to assist in setting up equipment and facilities in August 2004, this was an isolated, one time event. Any ongoing contact or interchange between Carson-Long Beach employees and San Diego employees is irregular. While Area Response Manager Nottingham and ultimately Regional Vice President Ricks manage all three facilities, there is no common day to day first line supervision of Carson-Long Beach and San Diego employees. There is a supervisor at the San Diego facility that has autonomy over the day to day operations, including the scheduling of work, granting overtime and time off and preparing the initial performance evaluations of Responders. Given the lack of regular employee interaction or interchange, the local autonomy and presence of supervision at San Diego as well as at Carson and Long Beach and the distance between Carson-Long Beach and San Diego, I find that the Carson-Long Beach facilities and the San Diego facility have not been so functionally integrated as to have lost their separate identities. The Carson-Long Beach facility is thus an appropriate unit. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

There is some interchange of employees between Carson-Long Beach and other California Regional facilities. However, this interchange is not a frequent occurrence. There has been sporadic delivery of vehicles and equipment by Carson-Long Beach employees to the Concord, California, Regional Office. Repairs and training have been conducted infrequently in

Carson and Long Beach by employees from other California Regional facilities. While the rates of pay, hiring, firing and discipline of employees is centralized at the Regional offices in Concord, California, local supervisors in Carson-Long Beach conduct day to day operations, assign work to Responders daily, supervise employees' work, schedule vacation, make overtime assignments, prepare performance appraisals, participate in the interview of prospective employees and initiate disciplinary actions. I find that the Carson-Long Beach facilities have not been so functionally integrated into Respondent's California Region as to have lost their separate identity and thus Carson-Long Beach remains an appropriate unit. *North Hills Office Services*, 342 NLRB No. 25 (2004); *First Security Services Corp.*, 329 NLRB 235 (1999).

Likewise there is occasional temporary assignment of Carson-Long Beach Responders throughout the United States in response to catastrophes like Hurricanes Rita and Katrina. This policy has impacted about half of the Carson-Long Beach Responders for a total of four to six weeks per Responder over the past two years as a result of the devastation caused by hurricanes in the Gulf Coast. While Respondent's ability to respond to natural disasters is an important service to its customers, it cannot be said that the isolated natural disaster response is a regular and substantial part of the day to day functions of the Carson-Long Beach Responders. Moreover, the duties performed by Responders during cascading to events such as the Gulf hurricanes is a natural extension of the jobs they perform and train to perform on a day to day basis while stationed in Carson and Long Beach. When assigned to perform temporary duty in the event of a natural disaster the Responders are not assigned to a new facility but perform duties on the site of the natural disaster, establishing that there is no significant interchange between facilities. The number of days assigned to temporary work in response to major spills and natural disasters represents a small fraction of the total days the Carson-Long Beach Responders worked in 2004 and 2005. The Carson-Long Beach Responders spend the vast majority of their time working with employees on the Responder teams assigned to Carson-Long Beach and are supervised on a day to day basis by Carson-Long Beach supervisors who assign work, grant time off, grant overtime and prepare initial performance evaluations. The Carson-Long Beach unit retains its integrity independent of the remainder of Respondent's Responders throughout the United States. *North Hills*, supra; *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999); *First Security Services Corp.*, supra.

### 3. Continuity of the Business Enterprise

Respondent argues that there has been a fundamental and substantial change in the employing enterprise so that under the *Burns*, *Howard Johnson* and *Fall River Dyeing* tests it is not a successor to CCW. Thus it is necessary to consider whether Respondent uses substantially the same facilities and work force to produce the same basic products for essentially the same customers in the same geographic area. *Valley Nitrogen Producers*, 207 NLRB (1973). While the Board considers the totality of the circumstances when determining if an employer is a successor, hiring a majority of the predecessor's employees is central. *Pennsylvania Transformer Tech., Inc., v. NLRB*, 254 F.3d 217 (D.C. Cir. 2001), enforcing 331 NLRB 1147 (2000). In assessing these factors the Board has traditionally held that changes in the employing entity will not terminate the successor's obligation to bargain unless "the employee's job situation is so changed that they would change their attitude about being represented."<sup>11</sup> In assessing whether Respondent is a successor the analysis must focus "not on the continuity of the business structure in general but on the parties' operations of the business as they affect the members of the relevant bargaining unit." *Food and Commercial Workers Local 152 v. NLRB*, 768 F. 2d 1463, 1470 (D.C. Cir. 1985) enforcing in part, denying in

<sup>11</sup> *Van Lear*, supra at 1059.

part remanding in part 268 NLRB 1483 (1984). See also *Pennsylvania Transformer Technology, Inc.*, *supra*.

5 It is beyond dispute that Respondent is a much larger organization than CCW with the ability to operate outside the Southern California area to encompass the entire coastal United States. Respondent's clients are far more numerous than CCW's. Respondent's corporate headquarters has standardized pay and benefits for all of its Responder employees that differ slightly from CCW benefits and Respondent has a centralized labor relations policy that applies to all Responders nationwide. Respondent performs services that CCW did not, including  
10 inland and coastal spill clean up as well as centralized communications. However, the mere fact that the successor is a larger organization with centralized labor relations and personnel policies, a different management philosophy and larger customer base will not alone defeat a finding of successorship. *Pennsylvania Transformer Technology, Inc.*, *supra*.

15 At the Carson-Long Beach facilities, a majority of CCW's employees continue to perform the same essential duties for Respondent, i.e., oil spill cleanup, with essentially the same equipment, i.e., small and large boats, barges, booms, oil skimmers, breathing apparatus and gas monitors. The Carson-Long Beach employees continue to service most of CCW's former clients in essentially the same geographic area as CCW from essentially the same facilities.  
20 Respondent's Responders are supervised by the two former CCW supervisors who perform essentially the same supervisory duties with Respondent. Nottingham, CCW's former president, continues to manage the Carson-Long Beach employees.

25 While Respondent introduced CCW employees to some new oil recovery equipment, it was not significantly unlike the equipment they were familiar with and continue to use. Former CCW employees are required by Respondent to use computer terminals to input maintenance records and have authority to charge up to \$1000 for parts. Further, Respondent's Responders are required to be on call at all times and occasionally perform their duties away from their permanent duty station. These temporary assignments away from the permanent duty station  
30 constitute an insignificant number of days out of the Responders' total days worked in a year. Further, this deployment is not unlike the assignment of CCW employees to other OSROW's for large oil spill clean up in California in the past decade. The modifications in the CCW employees' working conditions made by Respondent are minor alterations that do not change the CCW employees' job situation such that they would alter their attitude about being  
35 represented. I conclude that there is substantial continuity in the employing business enterprise. *North Hills*, *supra*; *Ready Mix*, *supra*; *Van Lear*, *supra*.

40 Having found continuity in the workforce, the appropriate bargaining unit and the employing business enterprise, I find that Respondent is successor employer to CCW within the meaning of *NLRB v. Burns International Security Services*, 406 U.S. 272, 281 (1972); *Howard Johnson Co. v. Hotel and Restaurant Employees, Detroit Local Joint Executive Board*, 417 U.S. 249, 263 (1974); and *Fall River Dyeing and Finishing Corp. v. NLRB*, 482 U.S. 27, 41 (1987).

45 In refusing to bargain with the Union as the bargaining representative of the Carson-Long Beach oil recovery employees, Respondent has violated Section 8(a)(1) and (5) of the Act.

#### Conclusions of Law

50 Marine Spill Response Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

5 Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO as the exclusive collective bargaining representative of its employees in the appropriate unit:

10 All full time and regular part time responders, master responders and lead responders employed by Respondent at its facilities located at 190 Pico Avenue, Long Beach, California and 20780 Leapwood Avenue, Carson, California; excluding office clerical employees, guards and supervisors as defined in the Act.

15 The above are unfair labor practices affecting commerce within the meaning of Sections 2(6), (7) and (8) of the Act.

#### Remedy

20 Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act. I shall order the Respondent to recognize and bargain with the Union as the exclusive collective bargaining representative of its employees in the above described unit and on request by the Union meet and bargain in good faith.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

30 The Respondent, Marine Spill Response Corporation, its officers, agents, successors and assigns, shall

##### 1. Cease and desist from

35 (a) Failing and refusing to recognize and bargain in good faith with Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO as the exclusive collective bargaining representative of its employees in the appropriate unit:

40 All full time and regular part time responders, master responders and lead responders employed by Respondent at its facilities located at 190 Pico Avenue, Long Beach, California and 20780 Leapwood Avenue, Carson, California; excluding office clerical employees, guards and supervisors as defined in the Act.

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50 <sup>12</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, meet and bargain in good faith with the Union as the collective bargaining representative of its employees in the described appropriate unit concerning terms and conditions of employment and, if agreements are reached, embody the agreements in a signed collective bargaining agreement.
- (b) Within 14 days after service by the Region, post at its facilities in Carson and Long Beach, California, copies of the attached notice marked "Appendix." <sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Company's authorized representative, shall be posted by the Company immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed a facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since July 15, 2004.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, at Washington, D.C. February 15, 2006

\_\_\_\_\_  
John J. McCarrick  
Administrative Law Judge

<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted Pursuant to an Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives or bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT refuse to recognize and bargain collectively with Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO as the exclusive collective bargaining representative of its employees in the appropriate unit:

All full time and regular part time responders, master responders and lead responders employed by Respondent at its facilities located at 190 Pico Avenue, Long Beach, California and 20780 Leapwood Avenue, Carson, California; excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO as the exclusive collective bargaining representative of its employees in the appropriate unit:

All full time and regular part time responders, master responders and lead responders employed by Respondent at its facilities located at 190 Pico Avenue, Long Beach, California and 20780 Leapwood Avenue, Carson, California; excluding office clerical employees, guards and supervisors as defined in the Act.

Marine Spill Response Corporation  
\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Las Vegas Resident office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

888 South Figueroa Street, 9th Floor  
Los Angeles, California 90017-5449  
Hours: 8:30 a.m. to 5 p.m.  
213-894-5200.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.

**THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC RECORDS**

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above.